

Jon Givens

From: McIntosh, Scott [Scott.McIntosh@dlapiper.com]
Sent: Friday, January 05, 2007 1:51 PM
To: Jon Givens
Cc: Jana Vanderbrink; Dienelt, John; McIntosh, Scott
Subject: Alaska--Insert IB2.DOC

Here is our Insert for IB2. Please send the revised Joint Memorandum so we can determine whether we are agreeable to the complete memorandum.

Regards,
Scott



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Thank you.

2. Defendants Contend that Avis Car Rental Group, LLC is the Sole Licensor, and Has Been the Sole Licensor, Since July 30, 1997

Avis Car Rental Group, LLC, known as Avis Car Rental Group, Inc. at the time the First Amended Complaint was filed (“ACRG”)¹, is the sole Licensor and has been the sole Licensor since July 30, 1997, when Alaska Rent-A-Car, Inc.’s License Agreements were assigned to it. At any point in time, there has only been one licensor. Prior to July 30, 1997, the licensor was Avis, Inc. from February 1, 1965 to May 11, 1965 and, following an assignment of the License Agreements, the licensor was Avis Rent A Car System, Inc. from May 12, 1965 through July 29, 1997. A more detailed explanation follows below:

On February 1, 1965, Alaska Rent-A-Car, Inc. (“RAC”) entered a series of License Agreements with Avis, Inc. *See* Docket No. 181, Exh. 15, pp. 1-10 (A 0027-A 0036). Paragraph 11 of each of the February 1, 1965 License Agreements, titled “Assignment,” states that “[t]his Agreement and all rights hereunder may be assigned or transferred by Licensor, and shall inure to the benefit of the Licensor’s successors and assigns.” Docket No. 181, Exh. 15, p.9 (A 0035). On June 4, 1965, a letter was sent to Avis licensees, including Alaska Rent-A-Car, Inc., providing notice that “Avis, Inc. has assigned all Avis License Agreements to Avis Rent-A-Car System, Inc.” (“ARACS”), enclosing a copy of the Assignment of the License Agreements, and indicating that the “Assignment simply changes the Licensor from Avis, Inc. to Avis Rent-A-Car System, Inc.” *See* Docket No. 46A, Exh. 6 (A 45727). The Assignment, which was dated May 12, 1965, specifically indicated that Alaska Rent-A-Car, Inc.’s License Agreements had been assigned to Avis Rent A Car System, Inc. *See* Docket No. 181, Exh. 15, p. 11 (A 0037).

On January 15, 1976, Alaska Rent-A-Car, Inc. and Avis Rent A Car System, Inc. entered into a settlement agreement (the “1976 Settlement Agreement”). *See* Docket No. 181, Exh. 15, pp. 12-18 (A 0038-A 0044). The 1976 Settlement Agreement identifies Avis Rent A Car System, Inc. as the “Licensor,” indicates that Alaska Rent-A-Car, Inc. and Avis Rent A Car System, Inc. are the parties to the February 1, 1965 License Agreements, states that Alaska Rent-A-Car, Inc. and Avis Rent A Car System, Inc. were parties to certain litigation involving the February 1, 1965 License Agreements, and provides that Alaska Rent-A-Car, Inc. and Avis Rent A Car System, Inc. would execute on the closing date an amendment to the License Agreements in the form of Exhibit A. *See* Docket No. 181, Exh. 15, p. 12 (A 0038). While Exhibit A, which was executed on the same date as the Settlement Agreement, listed the executing parties as Alaska Rent-A-Car, Inc. and Avis, Inc. (*see* Docket No. 181, Exh. 15, pp. 19-21 (A 0045 – A 0047)), the reference to Avis, Inc. was an apparent typographical error, as is clear from the context of the 1976 Settlement Agreement and its provision that Alaska Rent-A-Car, Inc. and Avis Rent

A Car System, Inc. would execute an amendment in the form of Exhibit A. Thus, as of January 15, 1976, Avis Rent A Car System, Inc. was still the Licensor.²

On July 30, 1997, a Separation Agreement was entered into between Avis Car Rental Group, LLC (which was known as HFS Car Rental, Inc. at that time), and Avis Rent A Car, Inc., which was the parent of Avis Rent A Car System, Inc. *See* Docket No. 46A, Exh. 11 (A 44364-A 44404). Pursuant to the Separation Agreement, Avis Rent A Car, Inc., on behalf of itself and its subsidiaries including Avis Rent A Car System, Inc., transferred certain assets to the entity currently known as Avis Car Rental Group, LLC.³ Among the assets transferred to Avis Car Rental Group, LLC were the Avis License Agreements (referred to therein as Franchise Agreements), including Alaska Rent-A-Car, Inc.'s License Agreements. Docket 46A, Exhibit 11, pp. 6, 25-33 (A 44369, A 44388-A 44396). Subsequent to the assignment of Alaska Rent-A-Car, Inc.'s License Agreements on July 30, 1997 to the entity currently known as Avis Car Rental Group, LLC, there have been no subsequent assignments of Alaska Rent-A-Car, Inc.'s License Agreements. Thus, from July 30, 1997 up to the present, the entity currently known as Avis Car Rental Group, LLC has been the sole Licensor.

¹ For the sake of clarity, Defendants in this section refer to corporate entities by their full names, rather than by acronyms. However, Defendants have indicated acronyms after the first reference to each entity to assist with review and cross-referencing to the parties' briefs.

² Plaintiff Alaska Rent-A-Car, Inc. appears to contend that the 1976 Settlement Agreement was entered by Alaska Rent-A-Car, Inc. with both Avis Rent A Car System, Inc. and Avis, Inc. While Defendants disagree with this contention, it is irrelevant because, following the assignments on July 30, 1997, discussed in the succeeding paragraph, the entity currently known as Avis Car Rental Group, LLC became the sole Licensor.

³ Docket 46A, Exhibit 11, p. 7 (A 44370) ("[A]s of the Separation Date, each party hereto shall be deemed to have acquired complete and sole beneficial ownership over all of the assets, together with all of the rights, powers and privileges incidental thereto, that such party is entitled to acquire pursuant to the terms of this Agreement.").